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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 41979
)	
v.)	BANNOCK COUNTY
)	NO. CR 2011-6912
MICHAEL L. SPARKS,)	
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

COPY

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK

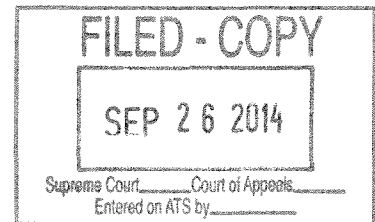
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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Michael L. Sparks pleaded guilty to felony second degree murder. The district court imposed a unified life sentence, with twenty years fixed. Mr. Sparks subsequently filed an Idaho Criminal Rule 35 motion to correct an illegal sentence, which the district court denied. Mr. Sparks appealed, asserting that the district court erred when it denied his motion to correct an illegal sentence.

In its Respondent's Brief, the State argued that Mr. Sparks did not establish error in the district court's denial of his Rule 35 motion to correct an illegal sentence. (Resp. Br., pp.1-4.) This Reply Brief is necessary to clarify Mr. Sparks' assertion that the district court erred when it denied his motion to correct an illegal sentence, in light of the State's quotation of the Idaho Court of Appeals' unpublished opinion in *State v. Nicolai*, No. 41566, 2014 Unpublished Opinion No. 509 (Idaho Ct. App. May 16, 2014). Mindful of the authorities cited in *Nicolai*, Mr. Sparks nonetheless submits that the twenty-year fixed term of his sentence is inconsistent with I.C. § 18-4004 and therefore illegal.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Sparks' Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err when it denied Mr. Sparks' Idaho Criminal Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Sparks' Idaho Criminal Rule 35 Motion To Correct An Illegal Sentence

Mr. Sparks asserts that the district court erred when it denied his Idaho Criminal Rule 35 motion to correct an illegal sentence, because the twenty-year fixed term of his sentence is inconsistent with I.C. § 18-4004 and is therefore illegal.

In its Respondent's Brief, the State quotes, or more specifically "[t]ranspos[es]," the Idaho Court of Appeals' analysis from *State v. Nicolai*, No. 41566, 2014 Unpublished Opinion No. 509 (Idaho Ct. App. May 16, 2014). (Resp. Br., pp.2-3.) The analysis from *Nicolai* draws on Idaho Code §§ 18-107 and 19-2513. (See Resp. Br., p.2.) Based on that analysis, the State argues that Mr. Sparks' "claim fails because trial courts have discretion to 'impose sentences within the maximum limits set by statute.'" (Resp. Br., p.3 (quoting *Cook v. State*, 145 Idaho 482, 488 (Ct. App. 2008).)

Mindful of the authorities cited in *Nicolai*, Mr. Sparks nonetheless submits that the twenty-year fixed term of his sentence is inconsistent with I.C. § 18-4004, and is therefore illegal. Idaho Code § 18-107 provides that: "Whenever, in this code, the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case, must be determined by the court authorized to pass sentence within such limits as may be prescribed by this code." A sentencing court "shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law." I.C. § 19-2513(1). However, "[i]f the offense carries a mandatory minimum penalty as

provided by statute, the court shall specify a minimum period of confinement consistent with such statute." I.C. § 19-2513(2).

As previously explained (App. Br., p.4), with respect to the mandatory minimum sentence for second degree murder, "Every person guilty of murder of the second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life." I.C. § 18-4004. Section 19-2513(2) "specifically limits the court's Subject Matter Jurisdiction to impose a determinate or 'fixed' term that is consistent with the mandatory minimum period of confinement that is already set in Statute, and that mandatory minimum period of time" in this case "is a period of ten [years]" under I.C. § 18-4004. (See R., p.28.) Thus, when sentencing a defendant for second degree murder, a district court must impose "a set mandatory minimum period of confinement" of ten years. (See R., pp.27-29.) Mr. Sparks' fixed term of twenty years is inconsistent with I.C. § 18-4004, and is therefore illegal. (See R., pp.27-29.) The district court erred when it denied Mr. Sparks' motion to correct an illegal sentence.

CONCLUSION

For the above reasons, as well as the reasons contained in Mr. Sparks' Appellant's Brief, Mr. Sparks respectfully requests that this Court reverse the district court's denial of his Rule 35 motion to correct an illegal sentence and remand the case to the district court for further proceedings.

DATED this 26th day of September, 2014.


BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of September, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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STEPHEN DUNN
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EVAN A. SMITH
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BPM/eas